



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

GREGORY TRIANA VILLEGAS,
Petitioner,
v.
TIMOTHY BUSBY, Warden,
Respondent.

Case No. CV 12-7102-ODW (MLG)
ORDER DENYING CERTIFICATE OF
APPEALABILITY

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts requires the district court to issue or deny a certificate of appealability ("COA") when it enters a final order adverse to the petitioner. Because jurists of reason would not find it debatable whether this Court was correct in its ruling dismissing the petition as untimely filed, a COA is denied.

Before Petitioner may appeal the Court's decision dismissing his petition, a COA must issue. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22(b). The Court must either issue a COA indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App. P. 22(b); see also *Wilson v. Belleque*, 554 F.3d 816, 824 (9th Cir.

1 2009).

2 The court determines whether to issue or deny a COA pursuant to
3 standards established in *Miller-El v. Cockrell*, 537 U.S. 322 (2003);
4 *Slack v. McDaniel*, 529 U.S. 473 (2000); and 28 U.S.C. § 2253⁶.
5 Ordinarily, a COA may be issued only where the petitioner has made
6 a "substantial showing of the denial of a constitutional right." 28
7 U.S.C. § 2253 (c) (2); *Miller-El*, 537 U.S. at 330. Where, as here, the
8 district court dismisses a habeas corpus petition without reaching
9 the prisoner's underlying constitutional claim, a COA should issue
10 when the prisoner shows, at least, that jurists of reason would find
11 it debatable whether the petition states a valid claim of the denial
12 of a constitutional right and that jurists of reason would find it
13 debatable whether the district court was correct in its ruling.
14 *Slack*, 529 U.S. at 484; *Gonzalez v. Thayer*, 132 S.Ct. 641, 648
15 (2012); See also *Miller-El*, 537 U.S. at 338.

16 In *Silva v. Woodford*, 279 F.3d 825, 832-33 (9th Cir. 2002), the
17 court noted that this amounts to a "modest standard". (Quoting
18 *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000)). A COA
19 should issue when the claims presented are "adequate to deserve
20 encouragement to proceed further." *Slack*, 529 U.S. at 483-84,
21 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)); see also
22 *Silva*, 279 F.3d at 833. If reasonable jurists could "debate" whether
23 the petition could be resolved in a different manner, then the COA
24 should issue. *Miller-El*, 537 U.S. at 330.

25 Under this standard of review, a COA will be denied. In
26 dismissing this petition for writ of habeas corpus, this Court found
27 that the petition was untimely in that it was filed more than eleven
28 years too late and that Petitioner had failed to establish that he

1 is entitled to equitable tolling. Petitioner cannot make a colorable
2 claim that jurists of reason would find debatable or wrong the
3 decision dismissing the petition. Thus, Petitioner is not entitled
4 to a COA.

5 Therefore, pursuant to 28 U.S.C. § 2253, the Court DENIES a
6 certificate of appealability.

7 Dated: September 26, 2012



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9
10 Otis D. Wright, II
United States District Judge

11
12 Presented by:



13
14 Marc L. Goldman
15 United States Magistrate Judge